

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.867 OF 2007

The Andhra State Road Transport Corporation, Andrapradesh, Hyderabad, Thr. Its Secretary, A.S. R.T.C. Hyderabad	} } } } }	...Appellant
--	-----------------------	---------------------

Versus

**NILAM
SANTOSH
KAMBLE**

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2024.04.30
17:37:37 +0530

1. Smt.Sulochana Kisan Patole Age-41, Household,	} }	
2. Kum.Anita Kisan Patole Age-20 Education	} }	
3. Kumari Jayashri Kisan Patole Age-18 years, Education	} } }	
All R/at C/o. Madhukar Nivruti Ghatage, Hudco Colony, r. No.C-97, Dhatav-Roha, Taluka-Roha, District-Raigad.	} } } }	...Respondents

Ms.Pinky M. Bhansali, for the Appellant.
 Mr.T.J. Mendon, for Respondent Nos.1 and 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th APRIL 2024

ORAL JUDGMENT :-

. This Appeal is preferred by Appellant-Corporation

against judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Raigad.

2. It is contention of the learned counsel for the Appellant that, accident occurred due to sole negligence of the deceased as he was trying to cross the Highway. To prove the defence the Appellant has examined driver of the offending bus but his evidence has not been considered by the Tribunal. The learned counsel further submitted that, the pedestrian cannot cross the Highway. The Tribunal should have considered the contributory negligence of the deceased, but it has not been considered. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the information of the accident was given to the Police by second driver of the offending bus and in the said information he has not stated that deceased was trying to cross the road. The learned counsel further submitted that, the Tribunal has applied multiplier of 8, it should be 13, as at the time of the accident the deceased was 45 years old. The learned counsel further submitted that the Tribunal has awarded

consortium amount on lower side, it be awarded. Hence requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

5. It is Claimant's case that on 29th October 1995 at about 2.30 p.m., the deceased was walking on Sion-Panvel road. When the deceased was crossing the road, the ASRTC passenger bus bearing registration No.AP-9/Z-3414 struck the deceased, resulted the death due to fracture of skull. The offence was registered against the driver of offending bus.

6. To prove the negligence of driver of offending bus, the Claimant's have relied on Police papers. To prove its defence the driver of the offending bus Mr.Ramchandra Shivram has examined himself at Exhibit-46. He has stated that on the day of the accident he was driving the bus towards Pune. The another driver Mr.Ishwar was taking the rest. He was driving the bus on the extreme left side. He noticed that one person on the road at the right side walking in a zigzag manner. Thus, he applied the break. Thereafter, he crossed the bus. One scooter was passing

from the left side of the bus. The said scooter gave dash to that person walking in a zigzag manner. Thus, that pedestrian fell at the cleaner side front portion of the bus at that time. This witness got down from the seat and rushed to the Police Station. This witness further stated that there was negligence of the deceased. He further stated that he has been acquitted from the charges levelled against him. In cross-examination he admitted that he has not reported Panvel Police that there was one scooter went from the left side of the bus, he cannot assign the registration number of the scooter. He cannot state name of the manufacturer of the said scooter. He cannot say the costume of the person of the scooter rider. He further admitted that he is not aware what was happened to that scooter. He further admitted that he has not made any written complaint to the Police Officer or a Higher Authority that the pedestrian was knocked by the scootorist and not due to the dash of the bus.

7. While dealing with the issue of negligence the Tribunal has observed that the driver of the offending bus did not tell the Registration number of the scooter nor the scooter's

manufacturing company. The Tribunal further observed that the spot panchanmma at Exhibit-24 shows that there was 8 feet wide kachha strip at the western side 15ft wide. The place of the accident was pointed out by the second driver of the bus Mr.Ishwar at a distance of 5 feet west from the eastern edge of the tarmetal road. The panchas found, there were 10 to 15 feet long brake marks of the bus. The panchas noticed the bus left side tyre marks on the kachaa strip. The bus was found in oblique condition just 10 feet away from the dead body. This fact suggests firstly the pedestrian was knocked first and then the breaks were applied. On that ground the Tribunal has considered that the accident occurred due to sole negligence of the driver of the bus. I do not find infirmity in it.

8. In my view, in the FIR there is no reference of about dash given by the scooter to the deceased. It is the driver of the offending bus who has stated before the Tribunal that after seeing deceased he stopped bus and he allowed the deceased to cross the road and after crossing the bus the deceased was knocked down by the scooter. The spot panchnamma shows that there were

break marks of the bus appearing on the road. It shows that after knocking down the deceased, the bus driver had applied the break. Moreover, spot panhnamma shows that tyre marks was appearing on the kacha road. It shows that when deceased was knocked down by the offending bus he was walking on the kacha street on the left side of the road. The Police papers produced on record supports the Claimants case. Hence, I do not find merit in the contention that accident occurred due to sole negligence or the contributory negligence of the deceased. At the time of the accident deceased was 45 years old. The Tribunal has applied multiplier of 8, it should be 13. Hence, I am considering multiplier of 13. The Tribunal has awarded consortium and loss of estate at Rs.15,000/-. In my view it is on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering this calculations, the Claimants are entitled for following

1 2018 ACJ 2782 (SC)

compensation.

Particulars	Amount
Monthly Income	Rs.11,448.00
Annual Income (Rs.11,448/- x 12 x 13)	Rs.17,85,888.00
(-) Personal Expenses (1/3rd amount)	Rs.5,95,296.00
Net Annual Loss of Income	Rs.11,90,592.00
Consortium (Rs.48,000 x 3)	Rs.1,44,000.00
Loss of Estate	Rs.18,000.00
Loss of Funeral	Rs.18,000.00
	Rs.13,70,592.00
Less : Already awarded	Rs.7,00,000.00
Enhanced Amount	Rs.6,70,592.00

9. In view of above, I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Claimant's are entitled for an enhanced amount of Rs.6,70,592/- @ 7.5% interest per annum from the date of the filing of Claim Petition till realization of the amount. Out of this amount Rs.1,80,000/- is consortium amount, the Claimant's are entitled @ 7.5% interest on it from 1st November

2017, till realization of the amount.

(iii) The Appellant-Insurance Company shall deposit the enhanced amount within eight weeks after receipt of the order.

(iv) The Claimant's are permitted to withdraw deposited amount along with interest.

(v) The Claimant's shall pay Deficit Court Fees, if any, as per Rules.

(vi) Record and Proceedings be sent to the Tribunal.

(vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)